

**Town of Milford
Zoning Board of Adjustment Minutes
May 3, 2012
Dakota Partners, Inc. &
37 Wilton Road Milford, LLC &
282 Route 101, LLC
Case #2012-06
Variance**

Present: Kevin Johnson, Chairman
Fletcher Seagroves
Steven Winder
Laura Horning
Zach Tripp

Absent: Len Harten, Alternate

Secretary: Peg Ouellette

The applicant, Dakota Partners, Inc, along with the owners of 37 Wilton Road Milford, LLC and 282 Route 101, LLC, of Map Lot 13, located at 37 Wilton Road in the ICI district, are requesting a Variance from Article V, Section 5.08, to permit up to fifty residential units in the ICI District.

THE MINUTES FROM MAY 3, 2012 WERE APPROVED ON AUG 16, 2012

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire statutes. He continued by informing all of the procedures of the Board; he then introduced the Board. He read the notice of hearing into the record as well as the list of abutters: Mark Prolman of 37 Wilton Road Milford LLC, Roberto Arista of Dakota Partners, and Andrew Prolman, attorney with Prunier and Prolman, were present. F. Seagroves stated the Notice cites Section 5.08 of the ordinance and questioned whether it should be Section 5.08.3. K. Johnson stated the Notice says 5.08 which is the ICI District; the specific request on the application is also 5.08, and it should have been 5.08.3. He then invited the applicant forward to present the case.

A. Prolman introduced himself as representing Dakota Partners and the partnership of the building owners, Mark Prolman and Eli Levine. Also present on behalf of Dakota Partners were Roberto Arista and Mark Daigle. He distributed documentation with exhibits A through G, dated May 3, 2012 to the Board members. The Pine Valley Mill, built in the late 1800's, is on the west side of town, and has historically has been industrial property. The land across the street has been industrial property and is naturally tied with the mill. The applicants were before the Board a couple of years ago for a residential subdivision across the street which is in the ICI District and were granted a variance to allow that, which was also approved by the Planning Board for a ten-lot subdivision. That is still on the books, but on hold and may or may not go forward due to the single family housing market. This project is a renovation of the mill for mixed-use development to keep most of the first floor commercial and the second and third floors residential, with a mix of one- and two-bedroom units. The project includes a lot of streetscape improvements, including segregated parking with commercial parking along Wilton Road leaving the residential parking in the back so there is no conflict between the two parking uses.

K. Johnson asked if there will be residential use on the first, second and third floors?

A. Prolman responded he will get into detail after the overview but that a portion of the first floor will be residential, and the second and third floors of the building will be residential. It will all be fully renovated, fully gutted, a building within a building. The commercial areas will remain intact but will get renovations such as new windows, individual heating and electrical as part of the whole project. There will be significant improvement and investment into the property. A. Prolman then reviewed the exhibits presented. Exhibit A is a detailed description of what they are proposing to do and a history of the mill; *"Redevelopment Plan – 50 Residential Units. The building totaling approximately 70,000 SF- 45,000 SF is the residential area and 25,000 SF will remain commercial area."* There will be 33 one-bedroom units and 17 two-bedroom units. These apartments will be smaller and are intended for single people and couples, not designed for families, although they will not be excluding families. The commercial space improvements, windows, mechanical and electrical upgrades associated with this project total approximately a \$12 million investment; \$11 million for the residential portion and \$1 million for the commercial area upgrades and renovation. Currently the back parking lot has access off North River Road which will be improved with additional landscaping and some access and drive aisle improvements, but it will be roughly the same. They will be removing approximately 7,000 SF of extra pavement and eliminate some of the excess parking. The frontscape however, is a mess. You can't see where the road starts and the parking lot ends and open asphalt from the parking lot to the river. They are proposing to clean that up with landscaping, trees and grass, as well as to create one point of access in and out close to the Souhegan River and one point of exit so for better traffic control and safety. There will probably be a few parking spaces at the very end of the mill to serve the Earthworks area.

L. Horning asked if the entrance will be one way and the exit another.

A. Prolman responded these are early plans; they haven't been to the Planning Board but, yes there will be an entrance/exit at a point close to the Souhegan River and they are showing an exit only at the second point of access.

L. Horning asked if they were trying to curb the ebb and flow of the way people come in and out?

A. Prolman responded that was correct.

L. Horning asked if the planned plantings will be trees or shrubs?

A. Prolman said there is nothing there now, so all of the above; trees, shrubs and there will likely be some mulch to fully dress the area up. Dakota Partners has a project in Tyngsboro, which he visited two weeks ago and said it is beautiful, top-notch, top quality all around. He would expect this to be the same with trees.

L. Horning said her concern is with visibility because this is a narrow lot. She expects they will use thinner saplings that are higher branched and low-lying shrubbery to keep visibility.

A. Prolman responded that the purpose is to create an island lot. They don't want to make it worse and will comply with whatever landscaping or streetscaping the Planning Board signs off on. The developers know what they are doing. Sometimes it is appealing to have a canopy of trees hanging over the road but it will be unlikely that they would have anything like that here as it is a good size right of way on Wilton Road and they will not be impeding that at all.

A. Prolman continued by stating that there is currently a hydro-electric facility there that will remain untouched and in operation; however, that will probably be blocked off in some fashion so no one will get in there.

A. Prolman said the argument with the ICI District is that the building is very unique. Other than the mill right behind Town Hall, he doesn't think Milford has any other old mills like this. The building itself is unique to Milford, but the ICI District is also unique. Looking at the zoning map, there are four (4) other ICI districts in town and each of those have either direct access to a main road or great visibility on the main road and most of them have both. In the applicants' area the ICI District has neither – no direct access to a main road. Most of Wilton Road leads to residential areas and there is no visibility. The mill is difficult to see from Rte. 101 heading east from Wilton and it is hard to see until you are at the light. If you look at other ICI districts, and this is the hardship argument for the variance, those districts come into town with direct access and visibility. You have the entrance from Amherst on 101A with Stop & Shop and McDonalds; the Chappell Tractor area with direct access to Rte 13 and Rte 101; the area near Granite Town Plaza along Elm St; and the little pocket where Market Basket is, at the intersection with 101. All have direct access on a main road and all with great visibility. This building is different; historically it was tied to the mill, which makes sense, but today it is not an industrial district, unlike the other ICI areas in town. There is residential to the north and west, heading toward Wilton, south of Wilton Rd, going up Maple Street to the Falcon Ridge project, and on North River Road heading east. So this is unlike the other ICI areas in town.

A. Prolman said Exhibit C regarding comparative project density was included because they are requesting fifty (50) residential units on 5.5 acres which is approximately ten (10) units per acre. Fifty (50) units sounds like a lot, but compared to other projects in town, it works and compared to senior housing, which is allowed in the ICI district, they could have a lot more density. The senior housing ordinance allows up to thirty (30) bedrooms per usable acre and they are coming in just over half of that.

K. Johnson asked how they approach the acreage of the entire 5.5 between the commercial section and the residential section. Is it based on the 45,000/25,000 SF proposal?

A. Prolman said he wasn't sure he followed the question, but what he did with comparing senior housing was allocate roughly four (4) acres. Not sure that answered the question.

K. Johnson said this project is both residential and commercial, so some of that acreage would be consumed under commercial. How was it determined what part of the 5.5 acres was allocated to the residential for calculation versus the acreage of the site commercial for its allocation?

A. Prolman responded it would be the 25/45 so that is roughly one-third? The commercial area will be improved, but it will not be affected. It would be an allocation between the two uses, but his point was that with the project density, it is in line with other projects in town, being more than some and less than others.

A. Prolman said Exhibit D shows that the current ICI District has a number of uses and he wanted to point out two things because residential uses are not entirely foreign to the ICI District. There are two areas, senior housing, and accessory dwelling units/in-law apartments are allowed by special exception.

K. Johnson said the accessory dwelling units are those dwellings that were in existence when the ICI areas were rezoned, so you could not put a single family home in there.

A. Prolman responded that his point was mixed use dwellings are now allowed by the town vote, two months ago. He was not saying they are doing accessory units or mixed use dwelling as defined in the statute. The mixed use defined in the statute seems to be an apartment located above a convenience store. The point was that it is an allowed residential use in the ICI District. It is not exclusively industrial.

K. Johnson said that is why it is ICI, not Industrial.

A. Prolman said that some residential uses in certain circumstances are allowed. He then explained that Exhibit E was long and did not go into great detail. The West Elm Street Gateway District, recently adopted in March by town vote includes this area; a section of Rte 101 and Wilton Road in this portion of town. In his opinion this project fits the aspirations of this district perfectly. They met with Bill Parker a month or two ago and were all commenting how much this project, that was not designed for this district, worked perfectly when Bill took out the gateway district map. According to the master plan, the gateway district is to promote commercial, industrial and mixed use development sensitive to the architectural heritage, enhancing the streetscape, etc. This project fits as well as you can with the new ordinance.

Z. Tripp asked if there are sidewalks currently on Wilton Road.

A. Prolman said no.

Z. Tripp asked if they were allowed to develop this property was there a plan to put in sidewalks at least around the property?

M. Prolman said there is a sidewalk at one place and showed it on the map.

A. Prolman said when they went through the planning process for the subdivision across the road, the planners and the Planning Board, thinking long-term, said they wanted public transportation, so in addition to sidewalks they had agreed there would be a bus stop area on the other side of the street directly across from the mill. It is intended to be a kind of turn-out and they have agreed to give that to the town; the agreement is on the table. It sort of goes hand in hand with the sidewalk because there will be some type of crosswalk for safety purposes to get to the bus stop, but that is part of the overall plan.

A. Prolman pointed to Exhibit F, from appraiser Jonathan Frank, a licensed appraiser in NH, dated April 17, 2012. In the last paragraph, he gives an opinion that there will be no diminution of value of property surrounding this development. It is his (Frank's) opinion that this project, apartments with continued commercial occupancy, will serve as an additional stabilizing force in the entire

neighborhood and serve as an additional transitional use from the commercial district on Rte 101 to the more residential neighborhood character. You have all the commercial businesses on the east, other commercial areas along Wilton Road and then on the other side residential, so there will be a transition from Rte 101 out to the residential area.

K. Johnson asked if there was access to the residential areas from the Wilton Road side.

M. Daigle responded there is access at the main entrance. They see the primary entrance to the back.

K. Johnson asked if the residents could park in the lower side.

M. Daigle said the lower area will be signed for commercial use. Residents will be restricted from parking there. There will be easier access from the back because you walk in at the second floor level so you drive in at that level. If they park out front they would have to walk upstairs, although residents on the first floor would have direct access. The intention is to sign and restrict parking.

K. Johnson asked if there will be residential parking for the first floor residents on the lower level side.

M. Daigle responded there will not.

A. Prolman said a resident could not pay attention to the signs and the rules and park there from time to time, but there will be a management company in place. He expects it will be self-policing; after awhile the commercial tenants are not going to put up with residents parking and using up their customers' parking.

A. Prolman referenced Exhibit G and said that Mark went to a number of the existing tenants for their input and the tenants said it is a great idea. Salon 2000 provided a letter of support, dated April 17, 2012 and the Doggie Day Spa thinks it is a great idea. It makes sense that the retail businesses would be in favor because there will be additional customers right there. Most importantly, Heidi Robichaud of Earthworks, who owned the mill with her husband for many years, prior to Mark, loved the idea. Earthworks manufactures high end microphones for musicians and it is important to recognize that Earthworks would have no particular benefit from the residents but is still in favor.

K. Johnson stated that while applicants had copies of the letters in their presentation, he did not. There are several letters addressed to the Milford Zoning Board in the presentation handout, but they never actually made it to the Milford Zoning Board and only one was signed.

A. Prolman said it is true that the letters from the tenants are not signed, but he gave his word, representing to the Board, that they are legitimate; Mark Prolman talked to his tenants and picked them up.

K. Johnson asked if the blacksmith is still down in the corner.

A. Prolman responded, yes, Vinnie is there and kind of watches over the place. He is there for the foreseeable future.

K. Johnson said the blacksmith shop is a more industrial use rather than a commercial use and he is concerned how that area of work would sit with the second floor residents.

A. Prolman said there will naturally be a turnover of residents over time. It will be the same as for the electrical facility, to make sure it is blocked off to prohibit access.

M. Prolman stated they feel comfortable with the use because that portion of the building is isolated from the rest. That entire section which includes a woodworker in the back will be separated by a firewall.

Z. Tripp asked if approved, how many remaining commercial spots will there be and is it equal to the number of residents they currently have?

A. Prolman said it will be flexible commercial space; probably 2,500 SF of commercial space.

Z. Tripp asked, if approved, will current residents fill out that commercial space, or will there be additional?

M. Prolman said the annex building is fully occupied, presently. Earthworks occupies 11,000 SF on the ground floor and they are expanding to fill up the entire first floor. The balance of the first floor, a small section, is residential. The occupied 1,100 SF at the back of the building is going to remain. The boiler room is separated off and whether that becomes a blacksmith shop or some other use, it is a beautiful 3,000 SF structure with high ceilings. It could become a church or have a lot of other uses.

Z. Tripp asked if they plan on having any additional commercial space available?

M. Prolman said no, and they need to be clear in terms of distinguishing commercial and office use. Earthworks is an R & D, light manufacturing/office type of location. The rest is retail, the hair salon, the dog day spa and the locksmith. He would not regard the locksmith as commercial or retail because he is off on the road doing repairs. There is no other what would be called retail, so it is primarily office, industrial, R & D type usage.

F. Seagroves asked if they will do away with the current shipping and receiving.

M. Prolman said yes.

F. Seagroves asked if there will be tractor trailers coming in.

M. Prolman pointed out where shipping will be located in another area of the building. There are two loading docks into the building; those will be shut off.

S. Winder asked what the grade over water of the property is.

A. Prolman said he was there a couple of weeks ago and it is probably a 30 ft bank where the blacksmith is. He was walking back where the road is and there is probably a 30 ft drop - in more than 30 feet difference.

S. Winder said he asked to lead into whether there is any flood water , sewer issue.

A. Prolman said he is not aware of any.

M. Prolman responded that maybe two years ago when we had the event where everything flooded, including the Souhegan Boys Club and the Granite Town Plaza had flooding issues, he didn't think they were within 20 feet of the top, maybe 25 feet of the top.

Another applicant stated the 500 year flood is the river bank in that area and they didn't even come close to that.

F. Seagroves stated there used to be a canal running across. He asked if that still goes underneath?

M. Prolman said it is called a pitstop, and if you follow the slashmark on the plan.

K. Johnson said it goes under the center of the parking lot.

M. Prolman said it comes across and goes across the parking lot and goes out. It is all below grade and below the parking.

F. Seagroves said it is not under the building?

M. Prolman said it is not under the building.

K. Johnson said it goes through and comes out into the river.

M. Prolman said in the 1980's it was converted; he has earlier plans showing it as a canal.

A. Prolman ask if there were further questions from the Board.

Z. Tripp said they touched on senior housing and density and that senior housing was allowed by special exception. He asked the applicant to speak to why they didn't go with senior housing as opposed to residential.

A. Prolman said they don't believe the market is there for senior housing. There are ample senior housing developments in the Milford area. With the nature of the financing they will be looking at, there will be some historic building tax credits from the NH Housing Finance Authority, tax

credits have been designed for smaller units not age-targeted. Primarily it is a market-driven issue. He said, as a side note, in another generation there will be less need for senior housing and there will be people like him asking the Board for release from the senior housing requirements; that will be a problem for not just Milford but for all towns.

F. Seagroves said regarding parking they have 73 spaces total.

M. Daigle of Dakota Partners addressed that. He said they have 75 spaces in the rear and another 62 spaces in the front.

F. Seagroves said he was just looking at the apartment spaces.

K. Johnson said there isn't enough parking – the requirement is 100.

M. Daigle said the requirement is 2 cars per unit and given the mix of sizes of the units the proposal would be to have 1.5 cars per unit, which would give them 75 cars in back. Their experience is, on average, with two bedroom units in the project and they have 1.33 cars per unit, so 1.5 cars where you have one-bedroom units is going to be a lot of asphalt that's going to be open.

F. Seagroves said he is concerned because his daughter lives in condos that have two parking spaces per unit and every two condos they have one visitor space, so if she invites guests over for a party and they come in with five cars, they have no place to park. It creates quite a problem.

M. Daigle said their experience is they have actual on the ground use of 1.33 with two-bedroom units; that is just the practical experience. It's a rental unit, not condo. It is different. In a rental project typically you have less use of cars. With 33 one-bedroom units they feel very comfortable that at 1.5 they will have more than enough parking.

R. Arista stated that the ratio is one space per bedroom.

M. Daigle said the other side of this is that for guests – the typical commercial use is daytime use so there is potential to use that as overflow for nighttime.

L. Horning inquired as to whether that wouldn't be only when businesses are closed at 8 or 9 p.m. If you had a young single mother with a child and what if she were to have two vehicles for that one bedroom. A valid point was made about parking. Is there a way to have some sort of minimal overflow, anticipate some kind of overflow with the lot they have?

M. Daigle said they felt they have. Earthworks is the largest tenant which will soon be in over 12,000 SF; they may use ten spaces, if that. Most of the people are on the road, they are remote. We are talking about 60 some-odd spaces and 10 or 11 occupied by Earthworks. The locksmith gentleman is on the road, the doggie spa does one dog at a time -- people come in one vehicle, drop their dog off and leave. She works by herself; she has one employee. The spa the same thing, she has one other employee. The woodworking gentleman in the back is by himself. So if you add it, there may be a total of 15 to 18 spaces used. When he has been there he has never seen more than 15 spaces used.

L. Horning responded that they stated they would have it signed so the residents cannot park there.

M. Daigle said it was stated that the majority of the people will be out of there by 5 p.m. so there will be 60 some-odd spaces there. He believes there will be a building manager on site. What R. Arista said about the ratio of one per bedroom, he owns apartments and they have one space per unit and it works. But there is some sort of policing that takes effect with an on-site manager and having these overflow people here at nighttime – as long as they are cleared out by 8 a.m. and there's cooperation, typically it works.

L. Horning said she's thinking long-term and what the longevity of some of these businesses is, there could be a business that moves in and doesn't close until 9 p.m. and wants patronage to go on

until 9 or 10 p.m. She said if, for example, she and her husband were renting a one-bedroom unit they would have two cars.

M. Daigle agreed with what she said but pointed out that Earthworks just renewed their lease and will be there a minimum of three years. They are an office R & D, nine to five type clientele. And they are almost 12,000 to 15,000 SF of this. This is not retail shopping. The only retail is the salon.

L. Horning stated she was aware of that but she was speaking of future tenants, if we don't have any idea how long existing businesses are going to stay there. If the parking for the tenants is going to be regimented and they are going to be forced to park out back, he just answered the question, stating that there will be a building manager on site and there will be some expectation that there will be some type of cooperation in that sense between the tenants and business owners.

M. Daigle said yes. If you have 12,000 SF of so-called office R & D – he's been doing this for years - you are not going to have a strict sole retail come in, and if they do he can assure that Bill Parker is going to come in and deny it because you don't have the parking. So there is your policing in that regard. He said he won't guarantee, but he owns acres across the street and future parking; if they have a problem they will work something out.

K. Johnson asked, when Z. Tripp brought up senior housing, they said there wasn't a need for it. What is the need for one- and two-bedroom apartments?

A. Prolman said the financing involved with this with NH Housing Finance has certain maximum rent that can be applied to these units.

S. Winder asked if it is low income housing.

A. Prolman said there is low income component but it is not intended... The rents that are going to be proposed here are less than the maximum allowed with the NH Housing Finance Authority money. In other words, the existing market rent for this type of housing in Milford is less or probably half. So they believe the market is there for new units at this amount of housing – for a new product and smaller units. Unlike senior housing they believe the market is there at this amount of rent. Senior housing is more expensive and targeting for a different market the rents are going to come is proposed rent of \$720 for a one-bedroom and \$875 for two-bedroom. Those are low rents and they believe the market is going to be there, the demand will be there for them.

R. Arista of Dakota Partners stated when they looked at the Milford market place and based on their studies they think that the majority are two bedroom units out there and there doesn't seem to be a big supply of one bedroom units. They believe there is a need for one bedroom units and the rents will be market rents and they will be for a new product in a very interesting space. They think they will be very attractive, especially to young renters. Right now they don't see that in this marketplace there is that kind of property.

Z. Tripp asked, when he says "new product" is he just referring to one-bedroom rentals?

M. Daigle said yes.

K. Johnson asked if they provided a copy of that.

M. Daigle said no.

S. Winder asked if the one-bedroom units upstairs are approximately 700 SF.

M. Daigle said that is correct.

S. Winder said he is asking because the Gateway plan indicates they are promoting greater than 600 SF.

A. Prolman said the one bedroom are intended to be approximately 600 SF. And the two-bedroom 900 SF.

R. Arista said the range of size of the one bedroom is roughly 550 to 750. There is a mix.

F. Seagroves asked if there is town water and town sewerage out there.

A. Prolman said yes.

F. Seagroves asked if they get their water from Wilton?

A. Prolman said yes. They have met with Wilton Water Commission and the Milford Fire Chief. They haven't met with Sewer; there is town sewer out there. Falcon Ridge across ..

F. Seagroves believes it is Milford sewer.

A. Prolman said yes; there is town water and town sewer.

F. Seagroves commented he is kind of curious that Wilton can take that add-on.

A. Prolman said there will be line improvements to increase capacity, expanding the line that serves the site.

M. Daigle said they met with Jim Tuttle previously when they got approval for the ten lots across the street. They had lengthy discussions with the commission. The commission has a desire to get the water line upgraded along Wilton Road. One of the things desired with the bus stop, the developers will provide a location for the pump station for the Wilton Water Commission. So at some point it will cross the river and connect with Milford, something that is very important to everybody. They have agreed to provide that location for the pump station. They met with Jim Tuttle, Chairman of the Water Commission; he is fully aware of what is going on and they feel comfortable they can work out the details re water. They met with Jason Smedick who is very enthusiastic about what they are doing and has no problem with it. Two very important meetings.

L. Horning asked if there will be a sprinkler system in there for the apartments.

M. Daigle said there is an existing system. There will be some modifications to that, but as Jason said that should not be a problem. It's changing the heads. He said they have to work this out in the planning process, but besides upgrading the water line everybody wanted to see an increase in the dimension of the water line that comes into the building.

L. Horning asked what size it is currently.

M. Daigle said six inches. It will go to eight inches. All these things are in the works but they have to do it in phases as the project progresses. It will enhance the public safety because it will provide for an upgrade of the water line. There are a lot of other people who will be positively impacted by this development. Without this development these things will not happen.

S. Winder said going back to the parking lot issue, some of this is geared toward younger people. Assuming for a younger person it will be hard to pay for a one bedroom. Applicants had indicated they are getting rid of a lot of the paved area in the back?

A. Prolman said they will pull some back because the pavement goes right up to the building.

S. Winder asked why.

A. Prolman said they don't think they need it.

M. Daigle said that could be an area for future expansion if needed. They don't think they will but would certainly be happy to designate that as a future area to be added.

L. Horning said that was the point she was trying to make earlier, that if it had to be done, there was room to do it. That was what they were trying to speak to. If it had to be done, if it actually came down to it.

M. Prolman said they have the area to add additional parking. They try to responsibly develop real estate so they are not creating asphalt. They could designate additional parking if the Board wants it or needs it now.

L. Horning said some questions the Board will ask are for the viewing audience who might not always know why you are speaking to a certain issue.

K. Johnson asked applicant to convince him that 150 cars a day through the Wilton Road intersection is not going to be a problem.

A. Prolman stated the intersection is to be improved with a better corner, general intersection improvement, with the Falcon Ridge project. That is still out there and is work that hasn't been seen yet. Regarding the traffic pattern, they met with the Planning Board. This road is not really designed for high traffic patterns; however Wilton Road is. They were told this intersection won't be an issue because of the timing and turnover of the peak traffic with people living there it will be a continuous flow of traffic not timed so you have long backups getting out of the parking lot.

L. Horning said they will add something with the bus stop across the street because the bus will stop there. They will have people walk from the apartment there.

A. Prolman said they are providing a bus stop area; the bus service is some time out in the future.

L. Horning said she understands, but the residential people living up there and coming down is what they were discussing.

M. Prolman stated if they build the entire building with commercial uses and office and we were at 3 per thousand, there could conceivably be 200 cars parked there and could all be coming and leaving at the same time every day. They are talking about a reduction in cars and a shift of cars taking place at distinct times of the day. There won't be residential people typically there during the day; you would have commercial people there during the day. And hopefully the commercial people are gone when the residential people come in.

L. Horning said he spoke to the curb issue on the plan when he was talking about cutting back on the plan?

A. Prolman said it is a safety issue. This is an open curb cut along Wilton Road. There is no distinction as to where to enter or exit. What they are proposing to do is curb it and create a distinct egress and ingress not only with new curbing but with landscaping and streetscaping. It enhances the safety. But to get back to that point, there could be 200 people here and 200 cars. People typically come to work one per car. So by right they could have 200 cars in there versus the mix they are discussing.

Z. Tripp said he is trying to picture in his mind the cement docking by the dock and the whole thing paved. He thinks that whole area is...

A. Prolman said it's a mess.

K. Johnson said that was his concern.

Z. Tripp said what he is seeing is that they will more define that intersection so there is more of a traditional road coming in.

A. Prolman said there are two pieces of the puzzle. There are some improvements that will improve that intersection, as well as this project cleaning up this whole area.

A. Prolman continued by saying they look at traffic analysis by peak usage, A.M. and P.M. He stated that M. Prolman is correct in that if you had it fully occupied you would have a lot of problems and a mix of commercial and residential softens that issue. It spreads out the peak usage over a long period of time. With the improvements, especially with the cleanup of the curb, they are helping the traffic issues even though they are adding cars up there. That's the goal.

K. Johnson asked the Board members if they had any further questions. There were none.

K. Johnson opened the meeting for public comment.

K. Bauer of North River Road, Milford came forward. She said it was mentioned that this plan the ZBA is looking at might change for the Planning Board if this is approved. What was meant by that?

A. Prolman responded with any application before the Zoning Board it is a preliminary application. Then when it goes to the Planning Board it gets the full scrutiny of the Planning Board – studies, many meetings, staff, everything. So when he says that they are showing trees, the Planning Board may not want trees. They may want low shrubs. It is those types of details that may be tweaked along the way with the Planning Board. However, unlike other sites, unlike the ten lot subdivision across the road, this building isn't going anywhere. They are not turning it, they are not adding to it or subtracting from it. With the building, what you see is what you get.

K. Johnson said they are not going to put a fourth floor on top.

A. Prolman said no fourth floor. It may be tweaked a bit; another would be the parking. They may expand the parking.

K. Johnson explained to the public viewing audience that the ZBA's job is to determine if, in this particular location allowing a residential combined use, the applicants have specified 50 units. If the Board says yes and only if they say yes, they could split the residential units and put 100 units in. That goes to the Planning Board and it becomes their authority as to how the entire project fits within the plan for the Town of Milford. The ZBA just needs to say whether it is acceptable, as the presentation has been made to us, to allow residential use in this Industrial Commercial Integrated District.

K. Bauer then asked if A. Prolman was stating that it would probably just be details, not to change the parking lot or the use of the building?

A. Prolman said just the typical details that go through the Planning Board.

K. Bauer asked if it their intention, as it is a historic building, to leave the exterior of the building as it is now?

R. Arista of Dakota Partners responded that they intend to put the building on the historic register and renovate to the standards of historic requirements. All the windows will be replaced to look like they were back in the 1870's and the brick work.

K. Bauer stated the presentation was emphasizing the amount of residential surrounding area, but as she looks at the zoning map it is true to the north there is a huge residential area. However, across the street, she believes there is commercial and another area was recently sold for single-family housing. It is zoned ICI and commercial and down in another area it is industrial.

K. Johnson stated that across the street it is also ICI.

K. Bauer just said she wanted to point it out for people watching.

K. Johnson thanked her for bringing it up. He brought out an exhibit in the application which mentioned there is a lot of residential around this one and not the other. He took exception with that statement because (pointing to the map) this is an ICI district surrounded by residential and other is an ICI surrounded by residential, there is a commercial surrounded by residential, another area that is commercial surrounded by residential, so there are residential areas abutting most of our ICI and commercial areas.

K. Bauer said we have seen plans before, talking about the southern portion of what is going to be developed in the future.

K. Johnson asked, across the street?

K. Bauer said yes. That was for a single-family subdivision. Since then there was a plan for two big multi-family units. Has that gone away? Just to clarify. The applicants are talking a lot about the rest of this land, so she's asking about that.

K. Johnson asked Bill Parker if he knows when that variance expires.

B. Parker said he doesn't know for sure.

F. Seagroves said he would say six months.

The consensus was that it would be within six months.

K. Johnson said he wanted to make sure; that was what he had thought.

K. Bauer said she thought that relief was granted in October.

F. Seagroves said 2010. In October. They gave an extension

K. Bauer asked if the multi-family - it's the same owner, they have plans for the whole bit and she'd like to hear them.

A., Prolman brought out a plan and said they went to the Planning Board in early April and showed this plan. The Planning Board were mostly positive; they had concerns. He said the Planning Board were receptive to the mill, and they said do some more work on this south portion. Rethink the density, rethink the plan. They liked a lot of aspects of the plan but said to continue to work on it. So the applicants did. It was pulled off and Dakota Partners and Mark Prolman and Eli are still looking at different aspects of it. There is land on the other side of the tracks that may come into play in conservation use. There are a lot of planning dynamics that they weren't ready for, so with respect to that side of the street, at the Planning Board's request, they pulled it off the table. It was a very good meeting. They will go forward with this (the plan being heard this evening).

K. Johnson said since A. Prolman brought it up, when the original application for the south of the street portion was brought up that was intended for single houses, are those rental units or condominiums?

A. Prolman responded they are all rental.

K. Johnson said the reason he brought it up was because it may have an effect on the Board's consideration because when that variance was granted, it was granted with the impression the Board had that these were going to be single-family homes for beginner home ownership and now applicants are talking about taking that variance and using it to create more rental property.

A. Prolman responded not necessarily using that variance to do something else, but K. Johnson is correct. That was a ten-lot subdivision with homes coming in around the \$300,000 figure. But the developer couldn't make it work because of the lane constraints. There is a lot of engineering and a lot of site work, more site work than was originally anticipated. But it is correct that they came to the Board for a ten-lot single-family, home ownership. So, if this comes before the Board like this, it is a different application entirely. But he doesn't want the Board to get hung up on that side of the street when the applicants are here for the other.

Z. Tripp said he wants to be clear that the Planning Board in its discussion type forum had seen the plan they have in front of them today for the mill and conceptually they didn't have any objections to that?

A. Prolman asked to have Bill Parker speak to that.

B. Parker, Director of Planning and Community Development spoke. He said what A. Prolman stated was correct. When Dakota Partners came before the Planning Board they showed the whole plan. The Planning Board likes to see the long range proposal so they can plan accordingly. For the mill side itself, they had the same questions that anybody is having - number of units, traffic, parking. A lot of those issues will be worked out with the Planning Board. About the south side of Wilton Road, as A. Prolman said, if that moves forward they will have to come back before the Board as well. It was probably an hour to an hour and a half discussion with the Planning Board laying out issues they wanted to look at.

K. Johnson said, moving back to the statement that the Planning Board was more comfortable with the mill project as it is described than with the future expansion of any other properties.

B. Parker said the Planning Board was comfortable with the mill project. He would not say they are more comfortable with that than the south side. They just had more questions with the south side. He felt it was fair to say, and K. Bauer was present that night, that the Planning Board thought it was a proper mixed use.

Z. Tripp said that answered his question.

K. Bauer said she didn't want to belabor the multi-family but did want to comment. Both she and B. Parker were at the meeting and in her opinion there were a lot more questions and possibly negative comments about need, etc., about multi-family portion than about the mill. But it is true, if they want to go with multi-family as on that plan they have to come back before the Board. She had two other comments. When the applicant talked about market demand and the applicants said they feel there is a market for it because it a lower rent. Is that how they are going to pull people in? Because it's a lower rent than the many, many apartments that are in Milford?

K. Johnson said he could answer that question. When the applicants said the draw to it is the availability of one-bedroom, that their market research showed that Milford has lots of two-bedrooms available but not as many one-bedroom units.

L. Horning said the Board has not had access to any of that information. They don't have those studies in front of them so the Board can't speak to that.

K. Bauer asked if the applicants feel the demand is there because it is lower rent than you can get in Milford.

R. Arista of Dakota Partners spoke. He said yes, the single-bedroom units will be cheaper on average than in Milford. The other average rent in Milford. So they will be affordable to young couples and singles who are just getting started. He repeated that these units will be attractive because they are in a renovated mill different from the typical garden style apartment.

K. Bauer asked to comment on the traffic which was discussed earlier. She said it is true you could have as many as 200 people with commercial retail use. You could also, if this went through, you would definitely have a huge amount of cars, possibly two cars per unit. So, no matter what this is used for, with this intersection, even with some improvement, this will really have to be looked at. Because it is a very busy road; the line of sight is not good. She also had a comment about zoning. This is in an ICI district which is Industrial/Commercial. In the zoning ordinance there are 28 acceptable uses for this particular district. As she looks through, and as the Board knows, there are several that could be used even in the existing building. In terms of use, in her opinion, it is difficult to persuade her that this is the only or unique use for this particular building. Also, in looking at the criteria that the applicants have to present next, one of them is the spirit and intent of putting a new use there, at 105 of the variance. Looking at the intent for ICI, which she equates with spirit and intent, "the intent of the Integrated Commercial Industrial District is to provide an area for sales and service activities both wholesale and retail, as well as industrial activities. This District is intended to be an area where vehicular oriented businesses can occur." She believes when the Town put ICI Districts in, in 1995, what the applicant has to do is convince the Board that there are unique conditions of this property which make the Board feel they should grant relief. She will leave that to the Board; they do a good job. She said the applicants have done a fantastic job researching and putting it together. This is a fantastic project; she feels, in her opinion, this is not the district to put it in.

B. Parker. Community Development Director came forward. He said K. Bauer is correct with the ICI District. He was here when that was implemented; he had just started working for the town. That was to promote increased flexibility in that particular part of town. Since that time, over 20 years ago, economic conditions have greatly changed and our zoning, in his belief, has not kept up

with the need to be adaptable and flexible so we can keep our community growing and vibrant. For the economic development of this town affordable housing is very critical to bring in workers for the industry that is here and industry we hope to attract. From a perspective of providing this type of housing, he feels it is very important.

K. Bauer said, if what B. Parker is saying is true, and she believes it is, then zoning should be changed. That is up to the vote of the Town of Milford after the Planning Board has examined it and given reasons why they think the zoning should be changed. She lives in a rural residential area and thinks it would be a great idea to have a convenience store down the road, but it is not allowed. If someone wanted to put one in they would have to prove to the ZBA that there were extenuating circumstances that would allow it in that district. Maybe our zoning is a little behind what the economic conditions are today and she thinks the Planning Board has done a good job seeing what needs to be changed and bringing it to the voters and usually the voters will go ahead with it.

K. Johnson asked for any other comment from the audience.

Z. Tripp had a follow-up question. It is currently ICI, what percentage of the building is currently in use and what is preventing the rest of the building from being rented to capacity?

M. Prolman responded. He said as part of one of the hardships that A. Prolman will address the fact that a substantial portion of the building has been vacant for about three or four years. It kind of dovetails with the comments of B. Parker and K. Bauer in that the 1995 ICI zone being very much outdated because you have a third floor of the mill that doesn't have an elevator. What office or industrial application would want to locate to the third floor of a mill? It's a hardship.

K. Johnson commented that doesn't say you couldn't put an elevator in.

M. Prolman said it would cost \$100,000.

K. Johnson responded that they are going for \$12 million. \$100,000 for an elevator versus \$12 million to rent the entire thing?

M. Prolman said they are talking about direct hardship with the existing condition of the property. To rent that space out for industrial use, it is a mill, it has a lot of columns, it is not typical office space and it has been vacant in excess of four years. And the market speaks to that. It is functionally obsolescent for the particular market.

L. Horning asked if they have anything regarding the advertisement of the mill to get an occupant in there?

M. Prolman said he tried marketing it through his own company and through Grubb & Ellis, a national company for a bit. He tried to market it for two years. Market conditions today is typically an office worker sitting in an office building with an elevator, air conditioned, utilities remotely controlled within the space. It is functionally obsolescent for what today is called for and what space needs are.

k. Johnson said, to play devil's advocate, what is to stop him from investing in the mill to bring it up to what would be attractive for wholesalers, retailers, restaurants, office, day-care facilities, light manufacturing, distribution and mailing center? These are basically the acceptable uses.

L. Horning said and promote job growth in Milford.

M. Prolman responded hardship can be financial, but it is hardship because if you look at the existing debt on the property, the taxes and operating expenses of the building, to make those types of capital improvements, they (potential tenants) can go down the street and lease existing properties in Meadowbrook Industrial or other parks in the town at substantially lower rents. He stated he can't compete once he makes those capital improvements.

L. Horning asked if these statistics are included in the plan?

M. Prolman said they were not.

L. Horning said it could have spoken to the hardship, had it been.

K. Johnson said that is not something the Board is allowed to consider.

L. Horning said that is why she is saying; that is why she asked.

M. Prolman said the predominant amount of space being turned over by the mixed use residential project is vacant space and it is vacant because the demand doesn't exist for that space for mill type of space.

K. Johnson said the applicants have done their market research and feel that there is a need for the residential use in the smaller 600-700 SF one-bedroom apartment.

M. Prolman said that is correct, and said he doesn't want to beat a dead horse, repeated that the one-bedroom product in a mill environment, not in a typical garden style complex that you see in town, creates the uniqueness of what they are presenting as the product.

K. Johnson said that is a fact; that he doesn't want them to say, that you don't want to beat a dead horse. He said that is something that for this project they need to stress. That is something that makes this project meet some of those uniqueness features. Why do we need more one-bedroom apartments? Well, we don't have a huge surplus, taking the applicants' word on that – and he has no reason not to. The investors are planning on investing a considerable amount of money and regardless of grants or where else it may come from, they will still be on the hook for a lot of money – you wouldn't just say “that's a good idea, let's do this.” Otherwise you could make it a bowling alley and expect thousands of people to come because it's cheap to go bowling.

M. Prolman stated that these gentlemen came to him and he thinks he turned them away three times initially because he didn't think the idea was sound at first. But the more and more the professionals spoke to the mixed use and how the integration of the existing vacant space worked, and the uniqueness of the product being in the mill. He doesn't believe there is any rental housing, non-elderly, in the town of Milford that is available for rent. And he doesn't believe there is one-bedroom. So there is a very unique component to these.

K. Johnson asked if there were any comments or questions. There were none He closed the public portion of the meeting. He stated the Board has not received any letters or e-mails regarding this case. He asked the applicant to go through the criteria for a variance.

A. Prolman requested to make one other comment before going through the five criteria. The Chair agreed. A. Prolman said for the Board's information, when M. Prolman was speaking about marketing of the property, he has been a commercial real estate broker for many years. So there is some weight behind that; it is not just M. Prolman talking.

K. Johnson thanked him for pointing that out. Most of the Board were aware of that, but it makes that clear to the audience that the Board understands who they are talking to.

A. Prolman said to answer the question of a moment ago, you could make an investment into the building to have it brought up to date so you had Class A office space or other retail. The problem is that the rent you will get in return doesn't justify that investment if you look at the tenant use now. For example, he works next to the Crowne Plaza Hotel and pays an astronomical amount of rent. The mill building, if it is improved to the Class A office space he works in, won't get that kind of rent; the market won't justify that type of improvement. As opposed to what Mark and Roberto are proposing – a very unique proposal with a mixed use and use of one and two-bedroom units. The map he provided, Exhibit B, he doesn't want the Board to misunderstand what he was saying with respect to the map. There are certainly residential areas around all the other ICI districts. He pointed on the map to residential areas off Emerson Road and along Elm Street, although separated by stretches. But the point with the map is to point out that their ICI district is

different from the ICI districts with traffic counts and visibility and access to the main road. There are residential around the property and they do have commercial on Rte 101 but the point with the map is that if you look at the other areas they all have direct access to a main road, or have great visibility for marketing purposes for retail operation like McDonalds and Dunkin Donuts and those kind of things, or both, and their lot has neither.

K. Bauer asked to make one more public comment.

K. Johnson said he would re-open the public portion of the hearing.

K. Bauer had a question that it was mentioned that financial hardship is not something this Board is supposed to look at.

K. Johnson said that is correct.

K. Bauer said she has no quarrel with these developers. They are professional and know what they are doing. Their financial problems are not something this Board is really allowed to look at. So, back to when K. Johnson asked if some of these allowed uses, could the property be developed for them, she is saying they could.

K. Johnson closed the public portion of the hearing.

A. Prolman read the five criteria. He read from a worksheet rather than directly from the application.

K. Johnson said it is slightly different from the application, but as long as he covers all the relevant points, it will be fine.

1. Granting the variance would not be contrary to the public interest because:

The application is not contrary to the public interest because applicants are preserving and developing and redeveloping a historic building to be put on the national register and developed to those standards. With residential areas around it, they believe it fits the aspirations of the Gateway District and is not contrary to the public interest for these reasons.

2. The use is not contrary to the spirit of the ordinance because:

M. Prolman said they spoke about the essential character of the neighborhood and whether this Variance would unduly change the character of the neighborhood. The OEP Handbook it refers to the essential character of the neighborhood. He stated they do not have that with this proposal, but just the opposite. The area of the mill remains the same although it will be renovated. The exterior remains the same. There will be improvements to the streetscape. He stated the proposal will not threaten the health, safety or general welfare of the town. It is true there is a traffic issue but that will be addressed with the Planning Board with traffic analysis and there are already improvements on the books with the Falcon Ridge project so applicants do not see any threat to health, safety and welfare of the town and they are not altering the essential character of the neighborhood. There is residential and industrial in the area. There is no character to the other side of the street since it is undeveloped.

3. Granting the variance would do substantial justice because:

Applicants believe there is substantial justice in granting the variance with the renovation of a historic mill allowing use of long-time vacant space, providing new housing stock. In addition to the one-bedroom and lower rent component, it is a new product that would be coming onto the market. There is something appealing about living in a new product in an old mill. Substantial justice is from the OEP Handbook. It is a balancing test between gain to the public and gain to the applicant. Applicants feel there is gain to the town and the applicants.

4. The proposed use would not diminish surrounding property values:

A. Prolman stated the Board has John Franks' letter regarding diminution of value and letters of support from the current tenants. He would guess that, if asked, the other retail operations along Rte 101 in the area would be supportive because of adding a younger customer base that would be supporting the small restaurants, small retail and shops, convenience stores, etc. It makes sense that the tenants in the mill would be supporting this. Mr. Franks' letter speaks to a healthy transition between the 101 businesses, commercial on the first floor and residential as you head up the hill on North River Road.

5. Denial of the variance would result in unnecessary hardship.

It is true there are many other uses allowed in the ICI District, but applicants not sure that is the standard today. They may have been the standard some years ago. The standard laid out in the statute is a two-part standard. . Getting to the two part variance,

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area: You must look at the special conditions of this property. The mill itself is its own special condition. It is unique and unusual in town and in this area of town. There is nothing like it in this half of Milford that they are aware of.

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

The proposal with the special condition of the property and with the one-bedroom product coming into town. The ICI district in this area is different. Wilton Road is not like Elm Street or Nashua Street. It is historically tied to the mill, but you have to look at that as special or different from the other ICI areas. A. Prolman stated he doesn't see it as an industrial area, unlike Millbrook which is industrial. Given the unique characteristics, the answer is no.

ii) and; The proposed use is a reasonable one because:

We have a reasonable use with respect to the residential use. Some residential use is allowed in the ICI district. Senior housing, as was discussed, is residential. All of the backside of the project going out to Wilton Road is residential. They believe they have a reasonable proposal. A rising tide lifts all boats. Residential use here will support commercial uses there and on Rte. 101. He feels they have a case for a variance.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

(from application) The special conditions of this property, on the western border, of the Town justify a variance:

-although zoned ICI, the immediate abutters and neighbors to the west and north are all residential. A new residential neighborhood (Falcon Ridge) is across the street and will be built out over the next few years.

-the existing mill is a unique property surrounded by residential uses; long term viability of mill requires mix of business and residents to support the other.

-proposal would allow transitional area between neighboring houses and Souhegan River/Route 101.

K. Johnson asked the board if they had any additional questions or comments.

There were none.

K. Johnson stated there were a couple of sections of the ordinance to read. One is from Section 5.08 that created the industrial and commercial ICI district. As was stated by K. Bauer, the intent paragraph in the ordinance states that *“The intent for the ICI District is to provide an area for sales and service activities, both wholesale and retail, as well as industrial activity. It is intended to be an area in which vehicular oriented business can occur.”*

K. Johnson stated that means that it is intended for businesses that draw a lot of cars. He stated there is a long list of acceptable uses. He did not read the entire list, but mentioned wholesale businesses, retail, restaurants, offices, daycare facilities. He stated some would never work with this, such as a utility, harvesting of natural resources, - those are allowed but are not applicable to this. He stated there are many allowed uses without the need to come before the Zoning Board. Allowed by Special Exception are schools, recreational facilities both for profit and not for profit, and technical characteristics such as altering the height, and setbacks, etc. and senior housing developments. He addressed the senior housing development, That is included in this district with the intent to promote senior housing and that was added in 2002. He commented that ten years later, while we are not so sure that is necessary to continue to promote senior development, it is there; if at some point the voters of the town decide to drop that out, it would be removed. What the applicant is asking relief from, their use, residential, is not among the acceptable uses or those uses allowed by Special Exception. To grant a variance, variances are covered in Section 10.01 of the Milford Zoning Ordinance. He read the conditions for granting a variance specified in Section 10.01.2: *“Every variance granted by the Board of Adjustment shall be based upon and accompanied by specific finding or findings that: A. There are special circumstances or conditions applying to the land or structure for which the variance is sought (such as but not limited to exceptional narrowness, shallowness, or shape of the property in question, or exceptional topographical conditions) which are peculiar to such land or structure, and the application of the requirements of this Ordinance provide an owner of such property a reasonable use of it and shall impose upon such owner a hardship not shared by the owners of other property in the same district. B. The specific variance as granted is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the land and structure. C. The granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and with the convenience, welfare and character of the district within which it is proposed and will not be injurious or otherwise detrimental to the public welfare.”*

K. Johnson then referred to the five specific criteria laid out in the underlying statute that must be met.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves stated that the ordinance mentions being detrimental to the public or how the public would benefit if the variance were granted, but merely must show there will be no harm if it were granted. He said that although with the intent of this area this is not allowed, he does not see any harm if this were granted.

K. Johnson read a little bit more from where F. Seagroves was reading, and stated they have moved over to the ZBA NH Handbook by OEP which states *“For the variance to be contrary to the public interest it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?”*

S. Winder said the Board have the five criteria in the zoning ordinance and feels the Board voted on the criteria for the ICI District, he feels this particular presentation would violate that variance and it may not do any harm initially but if it is for residential he can see that there could be some general health and safety issues with the way the roads are set up.

Z. Tripp said he didn't believe granting this variance would be contrary to the public interest. The applicants have testified, if approved, they intend to put the building on the historic register and with improvements to the property and to the road and the curb, granting it would not unduly and to a marked degree violate the objective of the ICI district. There is still commercial space and adding residential units to that would not unduly and markedly violate the ordinance due to the fact that by special exception some residential is allowed. If no residential was allowed at all, then he would have a different answer.

L. Horning said as it clearly states in the Ordinance 5.08 she would reiterate this is not a listed use there. The voters have not voted for this particular use. There are comparable uses but this is not one of them. It states, as was read "for the variance to be contrary to the public interest it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public." She would say granting the variance would be contrary to the ordinance in that it hasn't been addressed by the voters. It is not an allowable use in the area, although it is a very well-thought-out it is not in the ordinance and she believes this could lend itself to ... yes, in her opinion, granting the variance would be contrary to the public interest.

K. Johnson said he thought this variance could be granted and would not be contrary to the public interest. The whole reason for the variance is to allow uses for areas which are not defined in the ordinance so what the Board has to do is, rather than look at the specifics defined in the ordinance, they need to look at the general trend of that ordinance. Does it alter the essential character of the neighborhood? Converting the interior of the mill from commercial use to residential use he doesn't believe would alter the character of the neighborhood. As the applicant stated, there is residential around it. The amount of traffic that would flow as a result of it being residential versus commercial would be no more than a fully developed commercial use. He doesn't see where that would impact the character of the neighborhood. Would it threaten the health or general welfare of the public? Since they are renovating the space, the Board can be assured that the appropriate building permits will be issued, proper construction standards will be followed, so those health issues and general welfare issues will be addressed. Re safety, his only concern is with the traffic in the intersection with North River Road and Wilton Road. However, were the building fully developed as a commercial space, the traffic would be just as bad. Therefore he doesn't feel that would be a valid issue to raise from a safety standpoint, because the owners could go out and do whatever is necessary to bring in the businesses and we would have as much or more traffic flowing through that same area. It is his belief that the variance could be granted and not be contrary to the public interest. \

2. Could the variance be granted without violating the spirit of the ordinance?

K. Johnson read language on how to define the spirit of the ordinance. "*In general, the provisions of an ordinance must promote the health, safety and general welfare of the community*" but all of the ordinances do that, so they have to go back to the intent of this

specific section of the Ordinance 5.08 which states it is intended for businesses, mixture of offices, commercial, retail, wholesale, etc. as well as industrial.

Z. Tripp suggested reading Section Page 11-9 of the Handbook.

K. Johnson read *"In deciding whether or not a variance will violate the spirit and intent of the ordinance, the board of adjustment must determine the legal purpose the ordinance serves and the reason it was enacted. 'This requires that the effect of the variance be evaluated in light of the goals of the zoning ordinance..'"* He said that is where they need to take into consideration all of the acceptable uses and how they apply to this property in the spirit of the ordinance.

F. Seagroves said he regarding health, safety and general welfare, he does have a small problem with traffic but as stated, if they had a commercial business in there you would have more cars. He figures it could be anywhere from 50-116 cars at any one time. Nowadays it seems every husband and wife has a car. If you have a two-bedroom the other person is going to have a car. It is an area where you can't really walk to, so you would have to have cars. It will be a safety problem regardless of what is in there.

Z Tripp said re evaluating this requirement, what was interesting about this application before the Board is the applicant is trying to keep a portion within the ordinance so it is not a complete change going to 100 percent residential. The board has to evaluate whether taking a portion of this property and allowing 50 residential units would change the spirit of the ordinance. He would go back to Bill Parker's testimony that our zoning laws have not kept up as well as he would hope them to be. Part of the paragraph read is the reason why this was enacted was as a more transitional zone from the commercial area on 101A to a more residential area and a pre-existing industrial complex. He can see why it would be zoned ICI at the time. In reviewing it, as he was going through other zones, the uses for limited commercial zone has very similar allowed uses; the majority were actually duplicates. The intent of that zone,, paraphrasing, was to allow interaction between commercial and residential areas, and the way he went about it was that with two zones that have very similar uses he thinks the spirit of ICI would be intact with commercial retail and a portion of residential units.

S. Winder said to allow this would be an exception to doing substantial justice He understood maybe the zoning needs to be changed but it is determined as is. You could argue that other zoning should be changed. His concern is with traffic and safety. Applicants have done a good job of articulating how it will all work. He is still very concerned there will be an overload of individuals with cars coming out on a street that may or may not have a traffic light. Especially if there are children, you have busing that may have to come in. That is another exception they have to look at. There are too many issues and from his perspective this would violate that spirit.

L. Horning agreed. The future of this property the way it is being proposed is not addressed in the zoning ordinance. It is allowed in other areas but not allowed in this area. That is something that should be addressed by the voters. There is no major restriction to having this mixed use in this area but it has not been addressed in the zoning ordinance in this particular area Other areas of zoning have addressed it. She doesn't think it could be granted without violating the spirit of the ordinance in the same sense that Steve Winder was just speaking to, of traffic, the added flow, the narrowness of the road, the visibility factor – there are a lot of factors that speak to the general health, welfare and public safety. There is very large residential complex going on behind this property that is residential that

will contribute significant to the traffic although she understands extensive traffic studies have been done. There are demographics she can't speak to because she doesn't have them in front of her. She doesn't think it could be granted without violating the spirit of the ordinance.

K. Johnson said he does believe it could be granted without violating the spirit of the ordinance. He will read the ordinance for an Integrated Commercial Industrial District. The Industrial District has a very small amount of allowed uses, the harvesting of natural resources, manufacturing, research and development, distribution, processing and warehousing, processing of natural resources (as opposed to harvesting), newspaper and job printing and public utility. If we think about the manufacturing, that goes on in an industrial district typically those are the types of business that are not compatible with residential areas. However the commercial district, (he read the intent) "*the intent of this district is to provide areas for businesses, institutional, financial, governmental and compatible residential uses which constitute the commercial requirements of the town.*" The acceptable uses are many of the same, being retail businesses; wholesale businesses; restaurants- which was read from the other list; and it goes on --single family dwellings with the structures, with their respective related conditions set forth in Residence A District; two-family and multi-family dwellings, as opposed to the conditions set forth in Residence B . Within the Commercial we do have all types of housing, from single-family, two-family, multi-family. They are all allowed in the commercial district. They are not allowed in the Industrial. Since this property is located in the Integrated Commercial and Industrial he doesn't feel that it violates the spirit of the ordinance to allow that residential occupation in that particular section of the ICI zone.

3. Would granting the variance do substantial justice?

K. Johnson read from the Handbook, "*It is not possible to set up rules that can measure or determine justice. Board members must determine each case individually Perhaps the only guiding rule is that the loss to the individual that is not outweighed by a gain to the general public is an injustice.*"

Z. Tripp said if they were to deny the application he doesn't see how the public would gain and could possibly lose. With the plan they have presented it would improve safety and road conditions. There would be no gain to the public by denying.

S. Winder said they could grant. He doesn't see benefit by denying that the community would receive. What they are trying to do to the building makes a lot of sense in a historic landmark.

F. Seagroves said yes, he doesn't see where there is any loss to the individual not outweighed by gain to the public.

L. Horning said she looks at it as a whole piece of the ordinance not just individual criteria. She said you can't quantify that the loss to the individual will not be outweighed by gain to the general public.

K. Johnson asked if he can lead her through, if they deny, would there be a loss to the applicant?

L. Horning said absolutely, but then hesitated.

K. Johnson asked if she saw there would be a loss to the applicant based on the testimony.

L. Horning said she doesn't, because there is an allowance for the residential use.

There is an allowance for elderly housing there so she doesn't think there would be substantial loss to the applicant.

K. Johnson said granting the variance would do substantial justice. He accepts the testimony of the applicants that they have made a good faith effort, as any reasonable businessman would, to get occupancy in the building for the allowed uses in the commercial industrial area whether they be wholesale, retail, distributors, etc. From personal knowledge he knows there are quite a few similar commercial light industrial properties in Milford that are still currently vacant. That is the market that is oversaturation with available space. Not granting would result in loss to the individual. He accepts the applicants' testimony that they have done their research and believes they can't rent out the space as retail. He doesn't see any gain to the public which would outweigh any given loss. If the Board denies, what would the public gain? Again, accepting the testimony received, most of the building would sit there empty, it would not be renovated. The businesses that are there would stay there, and for the most part the property would sit unoccupied. He sees no gain from that scenario. He does see a gain to the public if it becomes occupied. As Bill Parker stated, it provides affordable housing for the people and businesses we are trying to attract. He's been in business long enough to know that before any company comes to town they are going to make sure people can access their facility. If people can't live within a reasonable area of their facility they are not going to come here. It makes sense to him that that we can put on the gain side. Not only does the individual gain by allowing this variance, he believes the public also gains.

4. Could the variance be granted without diminishing the value of abutting property?

F. Seagroves said the value of the surrounding properties would not be diminished. Other than extra cars out there, he doesn't think anybody would know something's happening inside that building, except for the new windows.

S. Winder said he thinks it will increase if anything on a commercial aspect.

Z. Tripp agreed. He doesn't believe granting this variance will diminish surrounding properties. The applicant supplied a letter from a real estate broker stating that. If anything when they have a mill that's not vacant when they restore it to its historical look, he believes it will probably increase the surrounding property.

L. Horning agreed. The variance could be granted without diminution to the value of surrounding property. It is going to go on the historical register as the applicant testified, and as Zach Tripp just stated the Board has evidence in front of them from a broker that testifies to that. In the way it has been constructed and it has been very well thought out, and the vegetation has been very carefully planned and the visual aspects will be incredible. She thinks it will add to the abutting property substantially.

K. Johnson agreed that granting this variance would not diminish the value of surrounding properties. The Board has, as the applicant submitted, the letter from F & M Appraisal that states there would be no impact on the surrounding properties and no counter-testimony occurring, he has no reason not to accept this appraiser's evaluation of the property. His own common sense tells him that a fully occupied and in-use building is much better for the surrounding neighborhood than a big empty space that is only occupied half the day. He doesn't think property values would be diminished.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

K. Johnson read from the Handbook regarding hardship: *"The term 'hardship' has caused more problems for boards of adjustment than anything else connected with zoning, possibly because the term is so general and has so many applications outside of zoning law. By its*

basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. The restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone.” Because the restrictions are shared equally no specific owner can claim hardship. What the Board is allowed to do is consider the uniqueness of a property and how the ordinance is applied to that property.

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves said this is a difficult one. We are talking about the property itself. He doesn't think there is a hardship here. This is actually a commercial building. It had a factory in it many years ago. This is in an ICI zoned area, for which intent has been read a couple of times, intended to bring in industry to the area and there are different uses that can be used in this area. He doesn't see there is a hardship.

S. Winder agreed. He doesn't see an unnecessary hardship under this particular criteria. With all these other uses. He can understand they may not be their more acceptable uses, he is not sure having this as a residential use would be a benefit.

Z. Tripp said to answer this he is going back to #2, whether the proposed use is reasonable. Given the property location off a major road and on what he would consider a more residential road going to Wilton, mixed use in the ICI is reasonable. The majority of surrounding properties are residential and it is a nice transition between the commercial on Rte 101 that is all commercially zoned along the east portion before Wilton Road. It is not uncommon to have residential on top of commercial in commercial zones. In the downtown district you have commercial on the first floor and residential on the second floor. He thinks the proposed use, given the location, and the structure of the building, is reasonable. Regarding section I, Fair and substantial relationship, he believes the full application of the ordinance to this particular property would not promote a valid public purpose. As he commented on the other questions and everybody else, the industrial portion of the ICI, he doesn't believe applies. Burdening the applicant with the industrial portion of the ICI would be a hardship. He doesn't think any industrial business would want to be located there. Regarding the commercial portion, the property is already there and he believes the residential could be integrated. Regarding the property itself, the Zoning Ordinance has the burden of all property within the district. The surrounding ICI across the street which is under variance is residential so other ICI in this area of town having the applicant burdened with ICI in the area would be a higher burden than others in the area. It is located off a major road, not on Rte 101. Wilton Road is more residential so people going to and from their homes. Other ICI districts in town are on major routes with high visibility and high traffic for commercial. What is unique about this property is it is off a major street with no high visibility. For the applicant to be burdened with the property that is only commercial and not industrial. He does believe denying would be an unnecessary hardship. As the commercial broker testified, he believes there has been due

diligence to fill the space. It is unnecessary hardship to find a use that there is no demand for.

L. Horning said in this case it would pose an unnecessary hardship. Reading paragraph B, “No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property” and “The proposed use is a reasonable one” If the criteria in Paragraph A are not established, “an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.” She thinks the location of the property and the way it is sitting off the road the facility looks more difficult than at other ICI property to market it. That is a hardship in her mind. Would granting the variance create unnecessary hardship taking into consideration Paragraph B, yes.

K. Johnson said he will read the statute. *“Will denial result in unnecessary hardship taking into consideration the following: i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and ii. The proposed use is a reasonable one.”* He will address the second one first. He believes the applicants’ proposal is a reasonable one. Re the hardship, and whether no substantial relationship exists between the general public purpose and the specific application of that provision to the property, he believes there is no fair and substantial relationship between the specifics of this ordinance and the application of the ordinance to this property. Wilton Road is not a major thoroughfare. The other ICI district in Milford are all on large thoroughfares. This is not. That gives the aspect of uniqueness. The case of the building it is, the fact that it is an old mill building as the applicant pointed out, is fairly unique in town. He cannot think of any other building in the same format. To make it available for any other use would require substantial renovation. He has been to businesses in that area. There are many commercial light industrial property available in town. If this were simply commercial they would not be considering it. It should be granted by right. It is only the fact that when the town created the zoning map and put in ICI. It is his belief that was done to give maximum flexibility to this property because it abuts commercial property. They wanted to give owners ability beyond just commercial uses. The character of this property and comparing them against the rest of the ICI. He does not believe there is fair and substantial relationship between the ordinance and this property, and denial would result in hardship.

K. Johnson asked if there were any additional comments; there were none so he stated after reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, he called for a vote.

1. Would granting the variance not be contrary to the public interest? K. Johnson explained the use of the double negative. It is so they can vote yes._

F. Seagroves – no, S. Winder – no, Z. Tripp – yes, L. Horning – no, K. Johnson - yes

2. Could the variance be granted without violating the spirit of the ordinance?

L. Horning – no, F. Seagroves – no, Z. Tripp – yes, S. Winder – no, K. Johnson – yes

3. Would granting the variance do substantial justice?

Z. Tripp – yes, L. Horning – no, S. Winder – yes, F. Seagroves – yes, K. Johnson - yes

4. Could the variance be granted without diminishing the value of abutting property?

L. Horning – yes, F. Seagroves – yes, Z. Tripp – yes, S. Winder – yes, K. Johnson - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

S. Winder – no F. Seagroves – no L. Horning – yes Z. Tripp – yes K. Johnson – yes

K. Johnson asked if there was a motion to approve case # 2012-06, a request for a variance.

Z. Tripp made the motion to approve Case #2012-06

K. Johnson seconded the motion.

L. Horning – no, F. Seagroves – no, Z. Tripp – yes, S. Winder – no, K. Johnson – yes
Case #2012-06 was denied by a 3-2 vote.

K. Johnson informed the applicants that their request has been denied by a 3 to 2 vote and reminded the applicant of the thirty (30) day appeal period.

Following adjournment of the hearing, A. Prolman came back saying he and the applicants were confused as to what the vote count was with the negative votes and the positive discussion.

K. Johnson agreed. A. Prolman said he understands he can request a re-hearing, but said they didn't know if it could be explained.

K. Johnson said if they answer "no" to any of the criteria they are bound to vote "no" to the question.

A. Prolman said during the discussion there were three votes on every criteria.

Z. Tripp said it doesn't work that way.

K. Johnson explained that on the five criteria three members must vote "yes" to all five. If Fletcher says yes to one but no to another then he has to vote no.

A. Prolman said he understands that but the final vote tally doesn't match what they saw in the discussion.

K. Johnson said the first vote is informal discussion. Laura may feel it is not a hardship but after Kevin makes an argument then she may say he is right. The only tally that counts is the final vote. Usually votes are more clear, but because this was a complex, long application the votes were more complicated.